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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

WALID SAMIR AYASS,

Defendant and Appellant.

D074693

(Super. Ct. No. INF1600324)

APPEAL from a judgment of the Superior Court of Riverside County,
John J. Ryan, Judge. Affirmed.

Randall Conner, under appointment by the Court of Appeal, for Defendant and
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Michael P. Pulos and Kathryn A.
Kirschbaum, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

Defendant Walid Samir Ayass appeals from a judgment entered after a bench trial. The trial court found Ayass guilty of committing one count of assault with a deadly weapon, a vehicle, and three counts of making a criminal threat, stemming from an incident at a gym during which Ayass accelerated his car toward another gym member and directed verbal threats toward that member, the gym owner and a gym employee.

On appeal, Ayass contends that remarks that the trial court made at the conclusion of the bench trial reflect that the trial court misapprehended the specific intent necessary to find Ayass guilty of making criminal threats, and that his convictions for making criminal threats must therefore be reversed. Specifically, Ayass asserts that the trial court's comments demonstrate that the court believed that an individual could be found guilty of the offense of making a criminal threat even if that person did not intend that his words be taken as a threat. We conclude that this is not the most reasonable interpretation of the court's remarks, and that the record thus does not unambiguously disclose that the court misunderstood the law regarding criminal threats. We therefore affirm the judgment.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Factual background*

On the day of the incident, Ayass was at a gym working out. While he was inside the gym, Ayass behaved "aggressive[ly]" toward, and was "confrontational" with, other

gym members. At some point, Ayass walked up to the gym desk and began trying to talk with the manager and the gym's owner. The gym's owner repeatedly attempted to direct Ayass to talk with the gym's manager, but Ayass continued to try to engage with the owner. Ayass eventually went back "into the gym," but left the gym a short time later.

When Ayass went to the parking lot to leave, he saw that another car was partially blocking his. Another member of the gym followed Ayass outside, initially to "confront[] him." When the member asked Ayass, " 'What did he need?' " Ayass indicated that he needed assistance in backing his car out of the parking space safely. The member helped Ayass back his car out of the spot. Ayass then gestured for the member to come over to where Ayass was in his car. Ayass and the man exchanged words; Ayass asked the man what his problem was, and the man responded, " 'Don't come back here.' " While the man was standing in front of Ayass's car, Ayass accelerated toward him. Ayass said, " 'I'm going to run you over, motherfucker.' " The man jumped out of the path of Ayass's vehicle.

Ayass then placed his car in reverse, backed up, and got out of his car.

In the meantime, a gym employee and the owner came outside to the parking lot after having observed what had just occurred. Ayass began yelling at the employee and owner, and threatening them, saying, " 'Fuck you, you fucking bitches' " and " 'I'm going to go home and get an M-Effer gun, and I'm going to blow you and everybody in here away and slit your throats.' " Another witness heard Ayass threaten to "blow the place up." Ayass then left the scene.

B. *Procedural background*

Ayass was charged by information with one count of assault with a deadly weapon, a vehicle (Pen. Code,¹ § 245, subd. (a)(1); count 1), and three counts of making a criminal threat (§ 422; counts 2–4). It was also alleged that Ayass's commission of the offenses charged in counts 1 through 4 constituted probation violations in a prior case.

Ayass elected to be tried by the court. Following a bench trial, the court found him guilty as charged in counts 1 through 4.

The court sentenced Ayass to a total term of three years in prison, comprised of the middle term of three years on count 1, plus concurrent two-year terms on counts 3 and 4. The court imposed but stayed the sentence on count 2 pursuant to section 654.

Ayass filed a timely notice of appeal.

III.

DISCUSSION

Ayass contends that his convictions for making a criminal threat should be reversed because, according to Ayass, the record demonstrates that the trial court misunderstood the law with respect to the intent element for that offense.

A. *Additional background*

At the conclusion of the bench trial, the court found Ayass guilty on all counts. In stating its verdict, the trial court said, "My decision has to be based on the evidence. The evidence is not contradicted in your argument, which is not evidence. You don't

¹ Further statutory references are to the Penal Code unless otherwise indicated.

contradict much of the evidence. I do know that many people don't think they should be punished when they haven't hurt anybody. And I understand that it's clear you did not hurt anybody. [¶] . . . [¶] As far as the three criminal threats, that's another law that people don't like or understand, because when people get mad sometimes they will say stupid things like[,] 'I'm going [to] kill you[,]' without really meaning it. But if the other person takes it as a threat, they are fearful for it [*sic*], they remain in fear because of it, because they believe you intended to carry it out -- whether or not did you [*sic*] or not -- it's a crime."

The court concluded, "That happens to be a law I don't like. That don't matter. There are a lot of laws I don't like. I have to follow the law. That's because some people say things they shouldn't have said and the other people get very fearful over it. [¶] And the threats you made would put a normal person in fear for their life and keep them in fear for their life for a reasonable period. There are three separate victims. [¶] I find proof beyond a reasonable doubt that you're guilty of the three counts of criminal threats."

B. *Analysis*

In order to convict Ayass of making a criminal threat under section 422, the offense charged in counts 2, 3 and 4, the trial court had to find (1) that Ayass willfully threatened to commit a crime that would result in death or great bodily injury to the victim; (2) that he made the threat with the *specific intent that the statement be taken as a threat*, even if he did not intend to carry out the threat; (3) that the threat was so unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose

and an immediate prospect of execution of the threat; (4) that the threat actually caused the person threatened to be in sustained fear for his or her own safety or for his or her immediate family's safety; and (5) that the threatened person's fear was reasonable. (See *In re George T.* (2004) 33 Cal.4th 620, 630.)

Ayass contends that when the court said, "[W]hen people get mad sometimes they will say stupid things like[,] 'I'm going [to] kill you[,]' without really meaning it," the court demonstrated that it misunderstood the law of criminal threats. According to Ayass, the trial court's comment establishes that in the court's view, there was no need for the defendant to have had the specific intent that the victim interpret the statement as a threat. In other words, he maintains that the trial court's comment indicated its belief that speech made with "reckless disregard of terrorizing another" is sufficient to satisfy the intent element of section 422. We disagree with Ayass's contention.

A trial court's remarks generally cannot be used to show that the court "misapplied the law or erred in its reasoning." (*People v. Tessman* (2014) 223 Cal.App.4th 1293, 1302 (*Tessman*).) This is generally based on the principle that, in a criminal bench trial, the trial court is not required to provide a statement of decision, and as a result, any explanation of the decision that a trial judge provides is not considered to be a part of the record on appeal. (*Ibid.*, citing *People v. Grana* (1934) 1 Cal.2d 565, 570.)

However, a significant limitation to this broad proposition exists in situations in which the court's remarks "*unambiguously* disclose that it failed to pass on the merits of

the issue [citation], or that its ruling embodied, or rested upon, a misunderstanding of the relevant law [citation] or an arbitrary or irrational point of view [citations]." (*People v. Penoli* (1996) 46 Cal.App.4th 298, 305–306 (*Penoli*), italics added.) In addition, this unambiguous disclosure must demonstrate an "incorrect rather than a correct concept of the relevant law, 'embodied not merely in "*secondary remarks*" but in [the judge's] *basic ruling*.'" (*Tessman, supra*, 223 Cal.App.4th at pp. 1302–1303, italics added.)

We are unconvinced that the trial court's remarks in this case unambiguously disclose that the trial court misunderstood the specific intent requirement of the offense of making a criminal threat. Specifically, when considered as a whole and taken in context, the most reasonable interpretation of the trial court's comments is that the court was stating that some defendants may dislike or view as unfair the law pertaining to criminal threats because an individual can be convicted and punished for saying "stupid things" when they are upset, even if the speaker does not intend to *follow through on the threat*.

Nor do we agree with Ayass's contention that the sentence following the court's statement about people " 'say[ing] stupid things . . . without really meaning it' " somehow "clarifies that the court's *preceding* sentence expressed that defendants sometimes [say] 'I'm going to kill you' without meaning it *as a threat*." Specifically, Ayass asserts that the court's remark "[b]ut if the other person takes it as a threat, they are fearful for it [*sic*], they remain in fear because of it, because they believe you intended to carry it out --

whether or not did you [*sic*] or not -- it's a crime" (italics added) suggests that the court was referring to the lack of intention *to make a threat* in the preceding sentence when it said "without really meaning it." We disagree. The court's use of "but" to introduce its reference to the "other person tak[ing] it as a threat," and the court's subsequent comments about the victim's fear, i.e. references to other elements of the offense, does not indicate that the court was suggesting that the person making the threat did not intend to make a threat. Rather, the most reasonable interpretation of the court's remarks is that the court was acknowledging that some defendants may not realize that when they make threatening comments, intending that the comments be taken as a threat, but not intending to *carry out the threat*, they may still be criminally liable if the victim perceives the comments as a threat and the other elements of the offense are met. The fact that the court used the conjunction "but" in introducing these elements does not, as Ayass suggests, mean that the court was clarifying its view of the specific intent element with its comments about a victim "tak[ing] it as a threat."

In any event, it is apparent that the court's remarks do not "*unambiguously* disclose" that the court was operating pursuant to a critical misunderstanding of the law. (See *Penoli, supra*, 46 Cal.App.4th at pp. 305–306, italics added.) There is thus no basis for this court to conclude that the trial court misapplied the law. We therefore affirm the trial court's judgment.

IV.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

O'ROURKE, Acting P. J.

GUERRERO, J.